

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9704 OF 2024

1. **SAMPAT S/O KERU CHAUDHARI,**
Aged about 72 years, Occ. Agri.
2. **SHANTA RAM S/O SAMPAT KERU CHAUDHARI,**
Aged about 46 years, Occ. Agri.
3. **SUKHDEV S/O SAMPAT KERU CHAUDHARI,**
Aged about 53 years, Occ. Agri.,
4. **SOMNATH S/O SAMPAT KERU CHAUDHARI,**
Aged about 52 years, Occ. Agri.
All R/o Pathardi, Tq. & Dist. Nashik.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through its Secretary,
Ministry of Urban Development,
Mantralaya, Mumbai 32.
2. **NASIK MUNICIPAL CORPORATION,**
Through its Commissioner,
N.M.C. Office, Rajiv Gandhi Tilak wadi
Saharanpur roadk-422 002.
3. **THE COMMISSIONER,**
Municipal Corporation Nasik N.M.C.
Office, Rajiv Gandhi Tilak wadi

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Saharanpur Road, Nasik-422 002.

4. **DEPUTY DIRECTOR OF TOWN
PLANNING,**
Municipal Corporation Nasik, N.M.C.
Office, Rajiv Gandhi Bhavan, Tilak
wadi Saharanpur Road, Nasik-422 002.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONERS	Ms Pushpa Ganediwala, with Anshu Agrawal, Ankit R Rathod & Chaitanya Purankar.
FOR RESPONDENT- CORPORATION	Mr M.L. Patil.
FOR RESPONDENT NO. 1-STATE	Mr R.M. Shinde, AGP.

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

RESERVED ON : 29th July 2024

PRONOUNCED ON : 1st August 2024

ORAL JUDGMENT (Per Kamal Khata, J):-

1. Rule.
2. Rule made returnable forthwith heard finally at the admission stage by consent of counsel.

3. The Petitioners seek a declaration that the old Reservation No. 17 as 'Garden' on their land has lapsed by operation of Section 127 of the Maharashtra Regional and Town Planning Act 1966 ("MRTP Act") and, consequently, a direction for the release of their land to them for development as permissible in law.

4. In the case of *Shivgonda Anna Patil v Sangli Miraj and Kupwad City Municipal Corporation*¹ decided by us, we referred to a judgment in the case of *Uday Madhavrao Patwardhan & Ors vs. Sangli Miraj Kupwada City Municipal Corporation, Sangli & Ors*² where it was held that there is no need for the owner to seek a declaration of the lapsing of reservation from the Court. The relevant paragraph 16 read thus:

"16. ... After service of a valid notice under section 127 to either the Appropriate Authority or the Planning Authority, as the case may be, if steps as contemplated by section 127 are not taken within the period stipulated in the section the reservation shall be deemed to have lapsed and the land in respect of which the notice is issued shall be deemed to be released from the reservation. Thus, by operation of law the land stands released from the reservation and the Planning Authority or Appropriate Authority cannot treat the land as reserved. In fact there is no need for the owner to seek a declaration from the court of law on the basis of notice under section 127. The effect of lapsing of reservation on the basis of the notice is automatic....."

1 2023:BHC-AS:29348-DB

2 (2015) SCC OnLine Bom 659.

(Emphasis added)

5. The law is abundantly clear. However, this Petition appears to have been filed out of abundant caution.

6. The Petitioners own a part and parcel of land admeasuring 2.28 HR of Survey No. 201/3 situated within the limits of village Pathardi, Tq & District Nasik (“said land”). The said land has been sub-divided in 3 parts namely Survey Nos. 201/1 admeasures 1.10 HR, Survey No. 201/2 admeasures 1.9 HR and Survey No. 201/3 admeasures 2.28 HR. The Petitioners are concerned with Survey No. 201/3 and the other two belong to Popat Keru Chaudhary and Baban Keru Chaudhary. The sub-division of lands in 5 parts amongst the Petitioners in the 7/12 extract is at exhibit “A” page 26 of this Petition.

7. The factual narrative is thus.

8. The said land was under reservation by Nasik Municipal Corporation (‘NMC’) under the Government Notification No. TPS-1193/2124/CR-126/95/UD-9 dated 19th February 1996 for “Garden” and construction of “DP Road”. This notification was confirmed by another Government Notification No. TPS-1116/C.R.No.140(B)2016/UD-9 by the Urban Development Department, Mantralaya, Mumbai on 9th January 2017. Thus, the said land’s new reservation No. is 329 for “Garden”.

9. There is no dispute that the said land has been reserved for “Garden” and “DP Road” for more than 10 years and that no steps

have been taken for acquisition by either any agreement or by publication of declaration as contemplated under Section 126 of the MRTP Act.

10. On 25 May 2011, the Petitioners issued and served a purchase notice under Section 127 of the MRTP Act., upon the Respondents. The same is annexed at Annexure “C” of the Petition at page 33. On 7th June 2011, the 4th Respondent called upon the Petitioners to submit certain documents. In response thereto, on 22 June 2011 the Petitioners submitted the documents and the explanations sought for from the Petitioners and communicated rejection of TDR offered by the NMC.

11. There has been no communication since 7th June 2011 by the Respondent Corporation. In these circumstances, the Petitioners seek that the Petition be made absolute.

12. Mr Patil for the Respondent Nos. 2 to 4 admitted that pursuant to the purchase notice, the Assistant Director of Town Planning called upon the Petitioners to submit documents and a response was received by them. He submitted that on 24th November 2011 the standing committee passed a resolution approving the proposal for acquisition of all the said lands. He submitted that the Assistant Director of town planning by the letter dated 3rd August 2011 stated that no TDR/FSI was given in respect of the said lands. He fairly submitted that the proposal for joint measurement of the lands was pending before the City Survey Officer (“CSO”). The CSO on 13th June 2014 had issued a letter

informing that the measurement of the land would be taken on 5th July 2014. On 16 September 2014, Mr Patil submits that the deputy collector land acquisition to Nasik wrote a letter to the CSO requesting him to submit a joint measurement map. He thus submitted that although the proposal for acquisition was submitted on 22nd November 2011 still the joint measurement map has not been submitted and hence the declaration under Section 19 of the Right to Fair Compensation and Transparency in Acquisition, Rehabilitation and Resettlement Act 2013 has not been issued and further steps of acquisition could not be taken.

13. Mr Patil submits that presently the said lands continue to be under reservation for the purpose of “Garden” under reservation No. 329 in the Revised Development Plan that was sanctioned in the year 2017. He submits that the Corporation does require the lands for public purpose of “Garden” as well as “DP Road” and is even today willing to give the DRC/TDR to the Petitioners for the land admeasuring 17,650 sq mts. At the same time, Mr Patil submits that the Corporation is going through financial difficulties since there are several pending acquisition proposals and large amounts are needed to complete the pending/completed acquisitions. In these circumstances, he urged that the Petition be dismissed.

14. Heard both the counsels.

15. This issue is no longer *res integra*. In the case of *Shivgonda Anna Patil vs Sangli Miraj and Kupwad City*,³ referring to the cases of

3 Writ Petition No. 7962 of 2023 dated 4th October 2023 :2023:BHC-AS:29348-DB

Balkrishna Jagannath Lad vs Indian Postal Department & Ors,⁴ *Babanrao Dattu vs State of Maharashtra*,⁵ *Bhavnagar University vs Palitana Sugar Mill (P) Ltd*,⁶ we took the view that once reservation lapses in terms of Section 127 of the MRTP Act, just because, subsequently, there is a Revised Development Plan or Final Revised Development Plan, that does not automatically revive the lapsed reservation.

16. Referring to *Girnar Traders vs State of Maharashtra*,⁷ we held that lands cannot lie locked under reservation indefinitely. The underlying principle is that the land given must be utilized for the purpose for which it is reserved in the plan and if not done the owner must be allowed to utilize the land as permissible under the town planning law. We held that a failure of the authorities to take steps which result in the actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act.

17. It would be worthwhile extracting the relevant paragraphs of the case of *Shivgonda Anna Patil vs Sangli Miraj (supra)* where we held as under:

“8. In the case of *Balkrishna Jagannath Lad*, and referred to in case of *Babanrao Dattu Versus State of Maharashtra*, a bench of coordinate strength of this court, relying upon the case of *Bhavnagar University*

4 2015 SCC OnLine Bom 4737 : 2015 5 MhLJ 899.

5 2023 SCC OnLine Bom 1590.

6 (2003) 2 SCC 111.

7 (2007) 7 SCC 555.

Versus Palitana Sugar Mill (P) Ltd, has taken the view that once the reservation lapses in terms of Section 127 of the MRTP Act, just because there is a revised development plan or final revised development plan, the lapsing of the reservation does automatically revive.

9. In *Girnar Traders Versus State of Maharashtra*, the Supreme Court observed that the legislative intent of the provisions under Sections 126 and 127 of the MRTP is to expeditiously acquire the land reserved under the Town Planning Scheme. Section 127 not only permits inaction for a period of 10 years but gives a further time to either 'acquire the land' or 'take steps for acquisition', not just steps which may lead to acquisition. Lands cannot lie locked under 'reservation' indefinitely. The underlying principle is that the land must, in a given time, be utilized for the purpose for which it is reserved in the plan, or, if not done, the owner must be allowed to utilise the land as permissible under the town planning law. A failure of authorities to take steps which result in the actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept.

10. Further, the Division Bench of this Court in case of *Ramakant Vasudeo Pai* and later in *Trilok Singh Pahlajsing Rajpal and Ors Versus MCGM & Ors*, after advertng to various judgments held that **the steps towards acquisition would really commence when**

the State Government permits the acquisition and as a result thereof publishes a declaration under Section 6 of the Land Acquisition Act 1894 or Section 19 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is a Section 6 declaration under the 1894 Act (or a Section 19 declaration under the 2013 Act) which would commence the acquisition proceedings under the MRTP Act and would culminate in the passing of an award under Section 126(3) of the MRTP Act. Unless and until a Section 6 /Section 19 declaration is issued, it cannot be said that the steps for acquisition have commenced.”

(Emphasis supplied)

18. As can be seen from the factual matrix narrated by the Petitioners, no steps as contemplated in law (narrated above) have been taken by the NMC in this case. The principles of law laid down by the Apex Court and this Court apply to the facts of this case. We are bound by the said Judgments, which fully support the Petitioner’s case.

19. Thus, in view of the aforesaid settled law, and upon applying such law to the undisputed facts in this case, the Petition is allowed in terms of prayer clauses (A) and (B) which read thus:

“A. Issue Writ of Mandamus or any other appropriate writ, direction or order thereby holding and declaring that, the land of the petitioners designated/ specified/ reserved for the garden under

the old reservation no.17 admeasuring 17650 Sq.mtrs. Situated at Survey No.201/3 and new survey number 329 of village Pathardi, Tq. & District Nasik (said land) have lapsed as per the provisions of section 127 of the Maharashtra Regional and Town Planning Act 1966 and further that the land of the petitioners are release from the said reservation, allotment or designated and have become available to the owner i.e. petitioners for the purpose of development as otherwise, permissible in law;

B. Issue Writ of Mandamus or any other appropriate writ, direction or order directing respondent State of Maharashtra to forthwith notify the lapsing reservation of said land by an order / notification published in the official gazette as required under section 127 (2) of the Maharashtra Regional and Town Planning Act, 1966; within 45 days from the order of the Court.”

20. The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127 (2) of the MRTP Act. This shall be done as expeditiously as possible, preferably within six months from today.

21. If the Petitioners submit any applications for development permissions, they must be considered expeditiously and, in any event, not later than within one year of their submission.

22. The rule is made absolute and this Petition is disposed of. No order as to costs.

23. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)